

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EUGENE LUMLEY, Individually and on Behalf  
of All Other Persons Similarly Situated,

Plaintiff,

-against-

UNITED STATES TRUST COMPANY, N.A.,  
BANK OF AMERICA, N.A., JOHN DOES #1-  
10, Jointly and severally,

Defendants.

No. 08 CV 3993 (TPG) (AJP)

**DECLARATION OF GREGORY  
PANNELL IN SUPPORT OF  
DEFENDANT BANK OF AMERICA'S  
OPPOSITION TO PLAINTIFFS'  
MOTION FOR APPROVAL OF  
COLLECTIVE ACTION NOTICE**

I, Gregory Pannell, declare as follows:

1. I have personal knowledge of the matters contained in this declaration, except where such facts are stated to be based on information and belief, and those facts I believe to be true. I make this declaration in support of Bank of America, National Association's opposition to Plaintiff Eugene Lumley's Motion for Approval of Collective Action Notice. If called to testify to the matters set forth in this declaration, I could do so competently.

2. I am currently a Senior Technology Manager-Generalist in Change Management and am responsible for handling Human Resources issues with respect to Bank of America's acquisitions. Prior to Bank of America, National Association's ("Bank of America") acquisition of United States Trust Company, N.A. ("U.S. Trust"), I served as Director of Human Resources Information Systems ("HRIS") at U.S. Trust. I have been employed by Bank of America and/or its predecessor companies since 2001. At all times I have held the Vice President officer title.

3. As Director of HRIS at U.S. Trust, I supervised three employees, two of whom held the officer title of First Level Officer ("FLO"). Their functional title at U.S. Trust was "Senior Specialist, HRIS."

4. When I managed HRIS, the Department was in charge of creating and maintaining various reports about employees, which were relied upon by U.S. Trust's Head of Human Resources and the managers of various business units at U.S. Trust; such reports included information about employee status changes such as hires, terminations, and promotions, the status of senior level hires, and the status of Managing Directors, all of which information was provided to various U.S. Trust Departments including Compliance, Audit and Finance. These reports were essential to the business operations of U.S. Trust, as they were the only firm-wide source of current information about who was actively employed by U.S. Trust.

5. More importantly, HRIS was in charge of taking this raw data and creating quarterly analyses and presentations to senior management and U.S. Trust's Board of Directors about trends in the employee population and hiring practices as well as ad hoc analyses and presentations for senior management on an as needed basis.

6. Senior Specialists were responsible for creating and maintaining the employee metrics, as well as creating the analyses and presentations about U.S. Trust's workforce and trends in the broader industry. I would estimate that seventy-five percent (75%) of the Senior Specialist's job functions were analytical in nature.

7. HRIS was always looking for new sources of information and new ways to analyze and present data. The Senior Specialists would search for external metrics about other employees in the financial services industry in order to create presentations and reports analyzing trends in the industry. For example, if U.S. Trust's Head of Human Resources was interested in learning about recruiting trends in the industry and the extent to which companies were using headhunters versus online recruiting sources, the Senior Specialists would conduct independent research, gather responsive information about other companies in the industry, prepare analyses of the data, and create presentations for senior executives at the firm. I relied heavily on the Senior Specialists' discretion to determine what data would be useful to collect and how that data should be presented.

8. The Senior Specialists would also advise other Human Resources

professionals, for example in Recruiting or Compensation, on how to create the most effective presentations from reports provided by HRIS.

9. Senior Specialists also had to exercise discretion in terms of which reports they would release to which employees and managers. Many of the reports generated by HRIS contained sensitive employee information, and I relied on the Senior Specialists to exercise sound independent judgment in determining how narrowly or broadly a report could be circulated.

I declare under penalty of perjury under that the foregoing is true and correct.

Executed at New York, New York, on August 14, 2008.

  
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Gregory Pannell